

FILED
ASHEVILLE, N. C.

SEP 16 2005

U.S. DISTRICT COURT
W. DIST. OF N. C.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

1:05mj218

IN RE: REAL PROPERTY LOCATED AT)
THE STREET ADDRESS OF 130)
CHARLAND FOREST ROAD,)
ASHEVILLE, BUNCOMBE COUNTY,)
NORTH CAROLINA, AND BEING ALL OF)
LOTS 14 AND 16 OF CHARLAND)
FOREST, PLAT BOOK 34 AT PAGE 6, PIN)
9667-14-34-6930-000, AND DESCRIBED)
IN DEED BOOK 945, PAGE 143, AND)
DEED BOOK 1179, PAGE 591, AND)
REFERENCED IN A DEED AT BOOK)
2085, PAGE 192, BUNCOMBE COUNTY)
LAND REGISTRY.)

**ORDER
AND LIS PENDENS**

FILE IN GRANTOR INDEX UNDER:

____JOHN JAY KELLY____
____JOHN J. KELLY____
____JANEY WOOD KELLY____

WHEREAS, the United States of America, by and through Special Agent Mark Aysta, Federal Bureau of Investigation, has presented an affidavit to the Court alleging that John J. Kelly owns an interest in the above-captioned property and that John J. Kelly has engaged in the illegal distribution and dispensing of controlled substances, in violation of 21 U.S.C. § 801, *et seq.*, and, specifically § 841(a)(1); and in mail, wire, and health-care fraud, in violation of 18 U.S.C. §§ 1341, 1343, and 1347; and,

WHEREAS, 21 U.S.C. § 801, *et seq.*, and 18 U.S.C. §§ 1341, 1343, and 1347 are

offenses for which the forfeiture of proceeds of or facilitating property involved in may be ordered as part of a criminal sentence; and,

WHEREAS, 21 U.S.C. § 853(p) provides that a court may order the forfeiture of substitute property if property subject to criminal forfeiture cannot be located or has been transferred or is otherwise unavailable; and,

WHEREAS, the Court, having reviewed the affidavit, finds that there is probable cause to believe that the property may be substitute property for the proceeds of or facilitation of the distribution and dispensing of controlled substances in violation of 21 U.S.C. §801 *et seq.*, and, substitute property for the proceeds of mail, wire, and health-care fraud, in violation of 18 U.S.C. §§ 1341, 1343, and 1347; and,

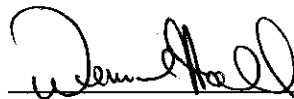
WHEREAS, upon this finding of probable cause, the property may be subject to criminal or civil forfeiture to the United States pursuant to 21 U.S.C. § 853, and the government is entitled to record a *lis pendens* to give public notice of the government's forfeiture interest and potential civil and/or criminal forfeiture claim against the property;

THEREFORE, the United States is directed forthwith to file this Order and Lis Pendens with the appropriate state or local public depository to prevent the flight or transfer of the property so that the United States may initiate action to adjudicate forfeiture of the property; and,

ALL WHO READ THIS ORDER AND LIS PENDENS TAKE NOTICE that the property is subject to forfeiture to the United States in a present or future criminal or civil *in rem* action before this Court, and any person who has a question as to this action should contact:

United States Attorney
for the Western District of North Carolina
Attn: Thomas R. Ascik, Assistant United States Attorney
100 Otis Street
Asheville, North Carolina
(828) 271-4661

This the 16th day of Septen, 2005.



UNITED STATES MAGISTRATE JUDGE

TO THE RECORDER OF THIS INSTRUMENT: MAIL ANY AND ALL RECORDED COPIES TO THE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF NORTH CAROLINA AT THE ABOVE ADDRESS.